MARRIAGE—BREACH OF PROMISE—SURVIVAL OF ACTION AGAINST EXECUTOR OF PROMISOR—SPECIAL DAMAGE.—QUIRK V. THOMAS, CT. OF APP., 140 L. T. (ENG.) 131.—Where the plaintiff, relying on the promise of marriage by the executor's testator, gave up a profitable business, thereby suffering financial loss through the breach of promise, *held*, that there could be no recovery, the court expressing its doubts as to whether or not the action would lie, even if special damage had been proven.

As a general proposition, an action for breach of promise of marriage does not survive at common law as it is purely personal. *Hayden v. Vreeland*, 37 N. J. L. 372. Some courts, however, intimate that the action survives if special damage is proven. *Larocque v. Conheim*, 87 N. Y. S. 625; *Grubb v. Sult*, 32 Gratt. (Va.) 203; *Smith v. Sherman*, 4 Cush. (Mass.) 408. The allegation of special damage must relate to property and be such as would be sufficient of itself to maintain a suit. *Hovey v. Page*, 55 Me. 142; *Jenkins v. French*, 58 N. H. 532. So where the primary cause of the injury is personal, although with resultant damage to the party's estate, which latter would not of itself be a ground for action, the action does not survive. *Drake v. Beckman*, 11 Me. & Wel. 316; *Vittum v. Gilman*, 48 N. H. 419; *Payne's Appeal*, 65 Conn. 379. In classifying the action for breach of promise, it resembles an action on the case for personal injuries, being sui generis, as it cannot be classed as a pure action ex contractu, as distinguished from one purely ex delicto, or vice versa. *Wade v. Klabfleisch*, 58 N. Y. 282. Regarding the action as being one of deceit, as there is a resemblance (*Stebbins v. Palmer*, 1 Pick. (Mass.) 71), it would not survive unless the estate of the testator was enriched thereby, *Jones v. Van Zandt*, 4 McLean 599, Fed. Cas. No. 7, 503. Thus there was created no quasi contract. *Phillips v. Homfray*, L. R. 24, Ch. D. 439. However, the states of New Hampshire and North Carolina have made statutory provision for the survival of the same. *Stewart v. Lee*, 70 N. H. 181; *Shuler v. Millsap*, 71 N. C. 297. In view of the unsettled state of the authorities regarding the survival of a breach of promise action, in the absence of statutory enactment, no definite rule can be laid down. However, it may be stated as a settled doctrine that where the injury to property is incidental to the personal injury, it does not survive. In the principal case the loss grew out of the broken promise, as appears, and therefore it should die with the transgressor, as his estate was not enriched and the primary cause of the action was the personal injury.

J. McD.

SALE OF STANDING TIMBER—CONSTRUCTION OF CONTRACT. CHAPMAN V. DEARMAN ET AL., 181 S. W. (TEX.) 808.—*Held*, that a warranty deed to all timber standing and growing upon a described tract of land, no mention being made in deed as to time of removal, conveyed a fee simple to the timber, and the grantee was under no obligation to remove the same within a reasonable time. Middlebrook, J., *dissenting*.

It has been held that such a grant does not convey the title in fee simple, but gives the grantee the beneficial interest only, until the timber shall be cut and removed,—a terminable estate, which ends when a reason-

able time, after the execution of the deed, for the removal of such timber has expired. *Fletcher v. Lyon,* 93 Ark. 5; *McNair & Wade Land Co. v. Parker,* 59 So. (Fla.) 959; *Carson v. Three States Lumber So.,* 108 Tenn. 681. Mississippi agrees with the principal case. *Butterfield Lumber Co. v. Guy,* 46 So. (Miss.) 78. Where the parties use words from which it is inferable that a reasonable time was meant, such construction will control. *Houston Oil Co. of Texas v. Boykin,* 153 S. W. (Tex.) 1176, where the phrase "to remove as shall be convenient" was construed to mean within a reasonable time. It would seem that parol evidence should have been admitted in the principal case, not to vary, but to explain the terms of the deed, to show the intention of the parties. *McNair & Wade Land Co. v. Adams,* 54 Fla., 550; *McRae v. Stillwell,* 111 Ga. 65. The principal case is clearly contrary to the great weight of authority.

E. J. M.

TAXATION—DELEGATION OF POWER—CORPORATE AUTHORITIES.—LALLARD V. MELTON ET AL., 87 S. E. (S. C.) 421.—*Held,* that a statute enacted by the legislature creating a commission to carry out the work of improving highways in a county, and authorizing the issuance of bonds by such commission for that purpose within a limit, and to levy certain taxes to meet these bonds, is not unconstitutional in that it vests taxing power in persons other than corporate authorities. *Seven dissents.*

The court in the principal case is unanimous in holding that there was a delegation of the taxing power, but they are divided seven to eight upon the question as to who constitute "corporate authorities" within that provision of the constitution which provides that "Corporate authorities of counties, townships, school districts, cities, towns, and villages may be vested with power to assess and collect taxes for corporate purposes." The majority followed the rule laid down in a long line of Illinois cases that corporate authorities must mean those municipal officers who are directly elected by the people, or appointed in some mode to which the people have given their consent. *Cornell v. People,* 107 Ill. 372. And the consent of the people to the election of these officers may be given by a vote upon the statute providing for their appointment. The officers so appointed become corporate authorities, and may exercise the taxing power when delegated to them. 4 Dillon Municipal Corps. sec. 1372; *People v. Knopf,* 171 Ill. 191. 2 Words and Phrases, 1602. However, there are courts which maintain that, inasmuch as taxation is a legislative act, "corporate authorities" in this connection refers to those officers to whom is given the ordinance-making power. *State v. Andrews,* 11 Neb. 524; *Howe v. Des Moines,* 103 Iowa 76. The still more strict view is held by the Kansas court that the officers must be directly elected by the people. *Parks v. Board of Com'rs,* 61 Fed. (Kan.) 437.

C. Y. B.

THEATERS—DRAMATIC CRITICS—CIVIL RIGHTS BILL.—WOOLLCOTT V. SHUBERT, NEW YORK LAW JOURNAL (CT. APLS.), FEB. 29, 1916.—The dramatic critic of a newspaper was refused admittance to a theater by the proprietors because of a displeasing comment upon one of their productions.